

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION**

DANIEL R. JUSKO, as the duly appointed
Administrator of the Estate of David
Michael Jusko, Deceased, and on behalf of all
wrongful death beneficiaries

PLAINTIFF

v.

No. 3:07CV00021 JLH

FARRIS JACKSON; WILL JACKSON, individually;
ARKANSAS STATE HIGHWAY DEPARTMENT; and
ALLSTATE INSURANCE COMPANY

DEFENDANTS

ORDER

Will Jackson has filed a motion to dismiss or for summary judgment in which he asserts that he is immune from suit pursuant to Ark. Code Ann. § 19-10-305(a) because there is no insurance that may cover his conduct in this case and that he is immune under the common law and the Eleventh Amendment. The motion is supported by affidavits to the effect that no insurance exists that may cover Jackson's conduct in this case. Insofar as the motion was filed pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, the motion is denied because the amended complaint states facts that, if proven, would entitle the plaintiff to relief. Insofar as the motion is filed pursuant to Rule 56 of the Federal Rules of Civil Procedure, the motion is denied as premature because plaintiff has not had the opportunity to conduct any discovery. Although the affiants may in good faith believe that no insurance policy provides coverage for Jackson's conduct in this case, plaintiff is entitled to examine any potentially relevant insurance policies before the Court decides that there is no genuine issue of material fact on this issue. The motion to dismiss or for summary judgment is DENIED. Document #18.

IT IS SO ORDERED this 19th day of November, 2007.

A handwritten signature in black ink, reading "J. Leon Holmes". The signature is written in a cursive style with a horizontal line underneath it.

JLEON HOLMES
UNITED STATES DISTRICT JUDGE